

17.09.00.00 - TRANSPORTATION ENHANCEMENT ACTIVITIES (TEA) AND ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM)

17.09.01.01 EEM/TEA - General

There are two programs where funding is made available for LPAs with environmental objectives: one is state-funded and the other federally funded. The R/W Local Programs Branch will generally have similar responsibilities for each program. The state-funded program is entitled the Environmental Enhancement and Mitigation (EEM) Program. The federally funded effort is the Transportation Enhancement Activities (TEA) Program. They are similar in objectives and operations, but have different project approvals and funding mechanisms. The Department administers both programs. The primary responsibility for processing agreements for the TEA Program lies with each District's Local Assistance Engineer (DLAE). The EEM agreements are processed initially by the EEM Program Coordinator in Headquarters, Division of Local Assistance (DLA) with assistance from the DLAE where the project is located.

For our purposes herein, both programs require matching funds from the recipient and both permit use of the funds to acquire land, which triggers the majority of the R/W involvement. The eligible costs of acquiring land, in addition to the purchase price, may include appraisals, surveys, preliminary title reports/title insurance and escrow fees, legal fees and clearance/demolition expenses.

There are other issues that may involve R/W such as utility relocation, modifications to railroad facilities, or access impairment. After the projects are approved and funding is in place, the R/W effort is generally the same for each program.

The policies and procedures for both programs are described in the DLA *Local Assistance Program Guidelines*. The TEA Program is dealt with in Chapter 8 and the EEM Program is found in Chapter 20. (Check Division of Local Assistance Web site: <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapg.htm>)

NOTE: Both the existing TEA funding program and the recent legislation commonly referred to as TEA-21 have the same acronym. Care should be taken so as not to confuse textual references to local agency transportation enhancement projects with the 1998 federal legislation.

17.09.02.01 EEM - General

The EEM Program was established by the Legislature in 1989 with the addition of Section 164.56 of the Streets and Highways Code. The program receives \$10 million in annual funding, subject to appropriation in each year's state budget. The purpose is to provide grants to local, state and federal agencies and nonprofit entities to mitigate the environmental impact of transportation projects in addition to any requirements of the environmental document. When the funds are used for property acquisition, compliance with the State Government Code (State Uniform Act) Section 7260 *et seq.* is required. This does not apply to private entities.

The grants are available for use in three broad categories:

1. Highway Landscaping/Urban Forestry
2. Resource Lands
3. Roadside Recreational

Anyone seeking further information about the EEM Program should be referred to the EEM Web site at:

<http://www.dot.ca.gov/hq/LandArch/eem/eemframe.htm>

17.09.03.01 **TEA - General**

The TEA Program was one of the components in the 1991 ISTEA. Funding for TEA projects has been reauthorized in TEA-21. TEA procedures allow R/W donations to count toward the local funding share of a project. Donations must be from private ownership to public ownership for project purposes. Acquired right of way is not eligible as the match. Land that has been acquired previously and is already intended or available for use by the public does not qualify for donation credit.

Anyone seeking information about the availability of TEA funds and/or how to apply for them should be referred to the TEA Web site:

<http://www.dot.ca.gov/hq/TransEnhAct/>

The purpose of the TEA Program is to provide federal aid to local and state agencies for transportation-related projects that enhance the quality of life in or around the transportation facility. As with the EEM Program, the funds are to be used for projects *over and above* any required mitigation for the project. TEA projects must be directly related to the surface transportation system. There are 12 categories of eligible uses for the funds. Some examples of common projects are bikeways, scenic land preservation, historic preservation of transportation facilities, landscaping or other types of scenic beautification, and preservation of railroad corridors for trail use.

17.09.03.02 **Environmental Clearance**

Projects in both programs require environmental clearance prior to funding approval. TEA projects require compliance with NEPA and EEM projects require compliance with CEQA.

17.09.04.01 **Restrictive Covenants**

When any of the project funds are used for land acquisition, both Programs place restrictions on the subsequent use of the lands. These restrictions are embodied in an Agreement Declaring Restrictive Covenants (ADRC) which is recorded along with the Grant Deed conveying the subject property to the applicant. The ADRC for the TEA Program is similar to the ADRC for the EEM Program. (For a sample ADRC for the EEM Program, see Exhibit 17-EX-19.) The ADRC limits the uses of the land to the purposes intended by the Program and protects the investment in the land should it be sold or no longer used for the approved purposes. Any subsequent transfer of the acquired property from the applicant to another party must be approved by the Department. Each ADRC includes exhibits for the Legal Description, Management and Maintenance of the property and Notice of Revocation of Restrictive Covenants.

NOTE: The ADRC must be signed by the Right of Way District Division Chief, or designee.

When the project funds are used for acquisition of a Conservation Easement only, the ADRC is not used. Contact the HQ EEM or TEA Coordinator for further details.

17.09.05.01 **R/W Responsibilities**

The DLAE should forward grant applications involving acquisition of real property or a conservation easement to the District Right of Way Office for their early review and involvement in these acquisition projects. By the time R/W becomes involved, the projects have already been reviewed, a specific amount of funding has been approved, and the CTC has allocated the funds. Thus, the role of the R/W Local Programs Coordinator, after the early review, is limited to either assisting the applicant, the DLAE and/or the TEA/EEM Program Coordinator in approving reimbursement for the acquisition expenses *after* the close of escrow or to facilitate the purchase *beforehand* by depositing the project funds in escrow accompanied by the appropriate escrow instructions.

NOTE: Although possible, condemnation is very rarely used in the TEA/EEM Programs. Most land purchases are the result of negotiations between a willing buyer and seller. Often the land has been for sale on the open market and both parties have agreed to the price. The Department's charge in these cases is to determine that the purchase price *fairly* represents the value of the land and to assist the parties as needed in the conveyance of the property. If there is a discrepancy between the purchase price and the appraised value, there should be some reasonable justification why the two amounts are different.

17.09.05.02 **Reimbursement Procedures**

A substantial number of TEA/EEM projects involve reimbursing agencies for the expenses already incurred in connection with land acquisition and related costs. In these cases, the following documentation will be submitted to the DLAE who will forward them for R/W review:

1. An appraisal in support of the purchase price.
2. A copy of the Grant Deed conveying the property to the applicant.
3. A copy of Policy of Title Insurance showing title vested in the applicant.
4. An invoice for reimbursement.

If the documents are in order, the Local Programs Coordinator should approve the invoice for payment and return the package to the DLAE. Any questions about the transaction may be referred to HQ Local Programs.

17.09.05.03 **Responsibilities for Purchase Escrows**

When the applicant requests that the Department deposit the funds directly into escrow for the purchase of the land, opening the escrow is the responsibility of the applicant. On these projects, the applicant will *usually* submit the following documents to the DLAE who, in turn, will forward them to the R/W Coordinator for review and approval.

1. Two copies of the Applicant-State Agreement
2. An executed Agreement Declaring Restrictive Covenants (ADRC) including Exhibits
3. A copy of a preliminary title report
4. A current appraisal in support of the purchase price
5. A copy of the escrow instructions
(See item "C" below for additions to the escrow instructions.)
6. An invoice for payment

The R/W responsibilities include the following:

- A. Reviewing the Preliminary Title Report, including the legal description to confirm that it adequately describes the property, and that there are no adverse conditions affecting title.
- B. Reviewing the appraisal to confirm that the agreed-upon purchase price “reasonably” reflects the fair market value for the property. For most projects, this can be accomplished by a “desk review” of the appraisal.
- C. Preparing the necessary escrow instructions on how the funds are to be used (e.g., for the purchase of the subject property when all of the escrow requirements have been met). On EEM projects, the escrow instructions should state that the Agreement Declaring Restrictive Covenants (ADRC) must be signed, along with the Grant Deed prior to close of escrow, and the escrow agent should forward copies of the recorded grant deed and recorded ADRC to Caltrans Local Programs within 60 days after close of escrow.
- D. Approving the invoice for payment for the purchase price of the land, plus escrow closing costs.

When the documents are in order, the invoice should be approved and the package returned to the DLAE.